UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

September 4, 2024

Via email only to: [redacted content]

Dr. Shane J. Farnsworth, Superintendent
Alpine School District

Re: OCR Case Number 08-21-1088 - Alpine School District

Dear Superintendent Farnsworth:

This letter is to notify you of the disposition of the above-referenced complaint that the United States Department of Education (the Department), Office for Civil Rights (OCR), received on January 26, 2021, alleging that the Alpine School District (the District) retaliated against the Complainant, a former employee, for opposing race discrimination.

OCR investigated whether the Complainant was precluded from coaching [redacted content] and other sports at [redacted content] during the Spring of 2021 and prohibited from refereeing little league games at [redacted content] in the Fall of 2020 because of his advocacy on behalf of athletes of color on the [redacted content] team, participation in investigations of complaints of race discrimination regarding the [redacted content] program, and filing of an individual complaint of racial harassment against a white [redacted content] coach.

OCR conducted this investigation under Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities operated by a recipient of federal financial assistance from the Department. Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from intimidation or retaliation by 34 C.F.R. § 100.7(e). As a recipient of federal financial assistance from the Department, the District is subject to Title VI, its regulations, and OCR's jurisdiction.

I. SUMMARY OF OCR'S INVESTIGATION AND FINDINGS

OCR's investigation included the following: 1) review of documents pertinent to the complaint allegations produced in this case, as well as a related case (OCR Case Number 08-21-1042), including the Complainant's personnel file, correspondence with and about the Complainant, the District's hiring policies for assistant coaches, the District's investigation of the Complainant, documents reflecting the re-employment of former [redacted content] coaches and employment of [redacted content] coaches at [redacted content], and the District's investigation of complaints of race discrimination at [redacted content]; 2) listening to recordings of interviews in the District's investigation of the Complainant; and 3) interviews of eighteen witnesses, including

the Complainant, coaches, school administrators, parents, students, and third parties associated with the administration of youth little league.

Based on OCR's careful review of records and interviews, OCR found by a preponderance of the evidence that the District retaliated against the Complainant for bringing and supporting complaints of race discrimination by precluding him from coaching [redacted content] or any other sports at [redacted content] in the Spring of 2021 and prohibiting him from refereeing at [redacted content] in the Fall of 2020 in violation of Title VI and its implementing regulations.

The District entered into the enclosed resolution agreement (Agreement) to address the violations OCR identified in its investigation. This letter explains the applicable legal standards and OCR's investigative findings, legal analysis, and conclusions. When fully implemented, the Agreement will resolve the violations identified by OCR.

II. FACTUAL FINDINGS

A. The Complainant's Employment History with the District

The Complainant is Black. In 2018, the Complainant was invited by his former [redacted content] coach, who was the [redacted content] (Head [redacted content] Coach 1), to assist [redacted content] team as a volunteer. In July 2019, the Complainant was hired as a paid coach by the District to coach [redacted content]. He coached the [redacted content] team for two seasons and the [redacted content] team for one season.

In the Spring of 2020, the Complainant was told that he would not be permitted to coach [redacted content] again. In mid-November 2020, Head [redacted content] Coach 1 resigned, and the entire [redacted content] coaching staff, including the Complainant, was terminated. In early January 2021, the Complainant was told that he would not be permitted to coach any sport at [redacted content] in the Spring of 2021, including [redacted content]. When a new head [redacted content] coach was hired in February 2021, some of the former coaches were rehired for the Fall 2021 season; the Complainant was not considered in the hiring process.

B. The Complainant's Opposition to Race Discrimination as a [redacted content] Coach

The Complainant was hired to be the head coach for the [redacted content] team for the 2020 season. The Complainant's Assistant [redacted content] Coach was the brother-in-law of one of the [redacted content] Assistant Principals (Assistant Principal 1). The Assistant [redacted content] Coach has two sons who played [redacted content] as does Assistant Principal 1. The son of [redacted content] also played [redacted content].

At the beginning of the 2020 [redacted content] season, the Complainant was told by the Head [redacted content] Coach that he needed to allow Assistant Principal 1's sons, who practiced with the [redacted content] teams, to play all four quarters of the [redacted content] games and be the captains of the [redacted content] team. The Complainant objected because he thought it was unfair to allow boys who were not practicing with the team to play and lead the team. The Complainant told the Head [redacted content] Coach that he did not care who the boys' father is; they could not play if they were not going to practice with the [redacted content] team.

After a [redacted content] game during which the Complainant refused to play Assistant Principal's 1 sons in the first half, the Complainant explained to the Assistant Coach that he was trying to level the playing field for the kids of color on the team who do not have a dad as a coach or school administrator.

After the season ended, the Complainant was informed by the Head [redacted content] Coach and the Athletic Director that he would not be permitted to coach [redacted content]. The Complainant was told that the team was going "in a different direction" and that he was "inappropriate for kids." The Complainant understood the "inappropriate for kids" comment to be a reference to the discussions he was having with players of color about favoritism in the [redacted content] program.

On May 28, 2020, the Complainant met with Assistant Principal 1, the Athletic Director, the Head [redacted content] Coach, and the Assistant [redacted content] Coach to discuss his concerns about race discrimination on the [redacted content] team. The Complainant complained about a specific encounter he had with the Assistant [redacted content] Coach at a game, which the Complainant viewed as "aggressive" and "racist." The Complainant and his wife additionally shared their belief that the Complainant's termination from his [redacted content] coaching position was not related to his performance, but instead because of racism and his advocacy for kids of color who do not have dads involved with the program. Lastly, the Complainant complained about a comment made by one of Assistant Principal 1's sons that the Complainant viewed as "racist."

Assistant Principal 1 summarized the May 28th meeting with the Complainant in an email to the [redacted content] Principal as follows:

> [The Complainant's] feedback was critical to hear and each person in the room had something to learn and grow from. As we know, [the Complainant] has been an advocate for students of color, and especially the young men of color here at [redacted content]. He has been an advocate for increased dialogue and interaction between community members so that bridges are built and equity increases while discrimination and hatred and intolerance decreases.

C. The Complainant's Opposition to Race Discrimination as a [redacted content] Coach

1. The Complainant's Complaints of Race Discrimination on Behalf of Athletes of Color

The Complainant told OCR that he became concerned about the way athletes of color were being treated on the [redacted content] team after a dad of one of the white players became an assistant coach ([redacted content] Coach 1) in or around March 2019. The Complainant described his general concerns to OCR as follows:

- Athletes of color were criticized more harshly than white athletes when they made a mistake;
- White coaches did not get to know athletes of color on a personal level;
- Athletes of color were not placed in positions that capitalized on their athletic

skills and strengths, thereby setting them up for failure; and
- Athletes of color were not permitted to play both offense and defense unlike white players.

The Complainant and several other witnesses described two specific instances in 2019 when the Complainant advocated for a Black player (Player 1) who the Complainant thought was being treated unfairly because of his race. In August 2019, there was an altercation between [redacted content] Coach 1 and Player 1 during a game. Player 1 claimed [redacted content] Coach 1 yelled and cursed at him, ripped his jersey, and benched him for defending himself in the game. The Complainant accused [redacted content] Coach 1 of being racist and treating Black athletes unfairly and differently than white athletes. The following week, after [redacted content] Coach 1 benched Player 1 again for an entire game, the Complainant again confronted [redacted content] Coach 1 during a coaches' meeting about his treatment of Player 1. The Complainant accused [redacted content] Coach 1 of benching Player 1 because of his race, which [redacted content] Coach 1 denied.

The Complainant told OCR that he became more vocal in his opposition to racism on the [redacted content] team in the Spring of 2020, after he was terminated from his [redacted content] coaching position for what he believed were racist and retaliatory reasons. For example, on or around July 14, 2020, after a biracial [redacted content] player (Player 2) was crying because he thought he was being singled out because of his race by [redacted content] Coach 1, the Complainant defended Player 2 and accused [redacted content] Coach 1 and the Athletic Director, who is also white, of unfairly "beating down on a defenseless" player of color.

Both the Complainant and Assistant Principal 1 told OCR that they had several conversations in the Spring and Summer of 2020 during which the Complainant complained about "daddy ball," a term he coined to express a lack of opportunity at [redacted content] for athletes of color in sports, including [redacted content], due to the large number of dad coaches. Assistant Principal 1 similarly told District investigators that the Complainant complained multiple times about the lack of opportunity for kids of color on the [redacted content] team.

The Complainant told OCR that he also had conversations with the Athletic Director and Head [redacted content] Coach 1 about the treatment of athletes of color on the [redacted content] team. He explained to the Athletic Director that the white coaches were not connecting with the students of color and did not understand their culture. He also complained to Head [redacted content] Coach 1 about delays in allowing Player 3, who was a new Black [redacted content], to practice with the team, which the Complainant described as different treatment based on race.

Several coaches told OCR that the Complainant also raised issues of racism on the [redacted content] team with the entire coaching staff at coaches' meetings. During these discussions, the coaching staff was generally divided in their stance; the [redacted content] coaches, who were largely dads of white players on the team, supported [redacted content] Coach 1 and the [redacted content] coaches, who generally did not have sons on the team and had coached with Head [redacted content] Coach 1 for years, supported the Complainant. The Complainant also met individually with [redacted content] Coach 1 on at least two occasions to express his concerns about how [redacted content] Coach 1 was treating athletes of color on the [redacted content] team.

2. The Complainant's Complaints of Physical Aggression by [redacted content] Coach 1

On or around July 16, 2020, the Complainant reported to Assistant Principal 1 that [redacted content] Coach 1 was "attacking players and coaches." The Complainant explained that [redacted content] Coach 1 aggressively went after Player 2 and the Complainant. He additionally stated that [redacted content] Coach 1 is a "racist when he attacks players of color."

On July 23, 2020, the Complainant called Assistant Principal 1 and told him that he just learned that [redacted content] Coach 1 was also physically aggressive with Player 1 last year (referring to the August 2019 incident during which [redacted content] Coach 1 allegedly ripped Player 1's jersey). The Complainant additionally told Assistant Principal 1 that a Polynesian student was pushed by [redacted content] Coach 1 last year but was too afraid to report what had happened.

On July 25, 2020, the [redacted content] Principal texted Head [redacted content] Coach 1 and wrote:

> Will you make sure [the Complainant] adheres to the things that were discussed at the coaches meeting when he comes back? Namely, no more daddy comments and making sure he is building unity vs sowing seeds of contention with the boys or staff members…

On July 31, 2020, the Complainant submitted a formal written statement to the [redacted content] Principal describing his interactions with [redacted content] Coach 1 on July 16, 2020 in greater detail. He explained that [redacted content] Coach 1 objected to an instruction the Complainant had given to a player and, during a break, approached the Complainant from behind and chest bumped him, making contact with his left shoulder. The Complainant stated that he was documenting the incident, which occurred in front of players, because he thinks [redacted content] Coach 1 was trying to intimidate or harass him based on his race, and [redacted content] Coach 1 has behaved in a similarly aggressive manner towards at least three athletes of color in the past. The District initiated an investigation into the Complainant's allegations.

Sometime at the beginning of August 2020, before the official start of the [redacted content] season, Head [redacted content] Coach 1 met with the [redacted content] Director and Assistant Principal 1 to discuss the tension between the Complainant and [redacted content] Coach 1. Head [redacted content] Coach 1 told OCR that he understood the problems between the two coaches to be based on the Complainant's belief that [redacted content] Coach 1 was treating athletes of color differently than white athletes on the team and [redacted content] Coach 1's belief that the Complainant was not treating [redacted content] Coach 1's son, Player 4, fairly. Head [redacted content] Coach 1 was instructed to hold a coaches' meeting to discuss these issues, which he did, and to try to resolve the conflict without firing any coaches.

On August 13, 2020, the Complainant filed a police report about the July 16th incident with [redacted content] Coach 1, calling the interaction an "assault" for the first time. [redacted content] Coach 1 was put on administrative leave the following day. The District suspended its investigation of the Complainant's allegations because the Orem City Police Department was investigating the matter.

Sometime in late August 2020, Head [redacted content] Coach 1 came to the Complainant's house and requested that the Complainant drop the criminal charges against [redacted content] Coach 1 because things could get "ugly" if he continues to pursue it. The Complainant responded that he needed to stand up for himself and the athletes.

3. The Complainant's and Other Coaches' Support of Parent and Student Complaints of Race Discrimination in [redacted content]'s Program

In early July 2020, one of the white [redacted content] coaches ([redacted content] Coach 2) quit because of the large number of dad coaches on [redacted content]. He told OCR that he thought having dads as coaches caused a conflict of interest, and he preferred to wait to coach until some of their sons had graduated.

On July 21, 2020, six parents of athletes of color on the [redacted content] team circulated a petition requesting that [redacted content] Coach 1 be removed from the [redacted content] program and the [redacted content] youth sports program. They asked community members to share their experiences with [redacted content] Coach 1. Approximately twenty people responded, all but one of whom agreed and/or detailed how [redacted content] Coach 1 targets players of color and favors his son and other white players. [redacted content] Coach 2 submitted the following statement in response to the petition:

> [s]everal times [Coach 1] got in my face to voice his displeasure with me and my decisions, a couple of these times he even backed me up to my car door and nose to nose with me to let me know his feelings . . . one time I tried moving out of the way and he just moved with me as to stay in my face. . . now that I hear about these other incidents, I realized that I was just the first victim in a pattern of aggressive behavior towards others when things are not in his favor.

On July 25, 2020, the same six parents of [redacted content] players submitted a formal complaint of discrimination to District administrators and the Board of Education against [redacted content] Coach 1, the [redacted content] Principal, and Assistant Principal 1. An additional nine complaints regarding racial harassment and/or discrimination in [redacted content]'s program were filed by parents, students, and another Black coach over the following three weeks. As a result, the District initiated investigations into these allegations.

Although the Complainant did not formally join in any of these discrimination complaints, he provided information to the District's investigators in support of the complaints. For example, during one of his interviews, the Complainant explained that many of [redacted content]'s white coaches single out kids of color, talk to them differently, and yell at them when they make a mistake. He named seven athletes of color who have been treated unfairly.

During another interview, the Complainant told District investigators that he has complained to Assistant Principal 1 about "daddy ball," but that nothing has been done to address his complaints of racism. He also shared his belief that Head [redacted content] Coach 1 is trying to address discrimination on the [redacted content] team, but that his hands are tied because he lacks the support of administration.

Several District witnesses told OCR about the Complainant's support of the parents' complaints. For example, the [redacted content] Principal shared with OCR his belief that the Complainant was not only supporting these complaints, but also feeding the parents information for their complaints. [redacted content] Coach 1 similarly stated in his response to the complaints against him that the claims were brought at the encouragement of the Complainant.

After exhausting the District's internal grievance process, the six parents filed an OCR complaint (OCR Case No. 08-21-1042) regarding race discrimination in [redacted content]'s program, which is currently being investigated. The Complainant was interviewed by OCR as a witness in that investigation.

4. The Complainant's [Redacted Content] Post Regarding Race Discrimination in [redacted content]'s Program

On or around September 15, 2020, the Complainant was interviewed on [redacted content] by a representative of the Utah Black [redacted content]s Matter (BLM) chapter. The Complainant explained that he was assaulted by a white coach on [redacted content]'s staff, and nothing has been done by the District to protect him or players of color although the coach has behaved in this way before. At the end of the interview, the Complainant stated that he was expressing his personal opinions. The BLM representative threatened to file a civil rights lawsuit against the District on the Complainant's behalf and bring the BLM chapter to the District to protest.

The next day, September 16, 2020, the Complainant pulled next to Assistant Principal 1 in the parking lot. When the Complainant said hello, Assistant Principal 1 responded that things are bad for him and his family, and he can no longer talk to the Complainant. From then on, according to the Complainant, Assistant Principal 1 would not acknowledge or address the Complainant but continued to talk to [redacted content] Coach 1.

On September 23, 2020, a Black parent of a [redacted content] player (Parent 1), who is close friends with Assistant Principal 1, questioned Assistant Principal 1 about his exchange with the Complainant. Assistant Principal 1 responded:

> The threat of legal action against me professionally civilly, or criminally requires me to do what I am doing . . . everyone gets to accuse me of whatever they want . . . I was talking on the phone when he pulled up . . . with a different person in the community who was telling me that I need to be careful with [the Complainant] because [the Complainant] has said that I'm a racist. . . [M]y life has changed since the [redacted content] with [the BLM representative]. I'm catching it from all angles.

Assistant Principal 1 provided a similar explanation to OCR. He stated, "every area of my personal and professional life was impacted by the parent complaints and the Complainant's filing of assault charges" against [redacted content] Coach 1. His inbox was full of BLM members calling him a racist. His sons stopped playing [redacted content] because of the accusations that they were being treated favorably. And he barely slept from when the Complainant reported the altercation with [redacted content] Coach 1 in July 2020 until early December 2020.

In the two weeks following the Complainant's [redacted content] post, the [redacted content] administration received approximately 150 emails from individuals sympathetic to the Complainant and his complaints about racism. The District also received several complaints about the Complainant from community members, many of whom are close friends with or related to [redacted content] Coach 1. Several of the community members expressed fear for the "mental, emotional and physical safety of the kids on the team" and requested that the Complainant be immediately removed as a coach and employee of [redacted content].

On October 8, 2020, BLM held a protest outside the District office and drove a caravan of cars over to [redacted content]. Participants were instructed to paint anti-racism slogans and the Complainant's jersey number on their cars to show their support for him.

D. The Preclusion of the Complainant from Refereeing and Coaching at [redacted content]

1. The Restriction Placed on the Complainant from Refereeing Little League Games at [redacted content]

In addition to coaching high school [redacted content], the Complainant worked for three years as a referee of little league [redacted content] in Utah County. The games are held at schools throughout the county mainly on Saturdays and sometimes on weekday evenings. The Complainant preferred to referee at [redacted content] because it was most convenient since he was already at [redacted content] for [redacted content] practice during the week and coaches' meetings on Saturday mornings.

In August 2020, at the beginning of the little league season, the little league assigner for Utah County received a verbal request from someone, who he identified to OCR as the [redacted content] little league coordinator, requesting that the Complainant not be assigned to referee at [redacted content] because the Complainant and [redacted content] were "at odds" and there was "turmoil" there. The [redacted content] little league coordinator at the time was [redacted content] Coach 1. [redacted content] Coach 1 declined to be interviewed by OCR but denied through his counsel that he made the request at issue.

The little league assigner told OCR that he consulted with the president of the Utah County Youth [redacted content] Conference (Youth Conference) about the request and was advised to avoid scheduling the Complainant at [redacted content], which is what he did. He told the Complainant on or around September 2, 2020, that he was not going to be scheduled at [redacted content] that season because of a request related to the situation between him and another [redacted content] coach and the [redacted content] administration.

According to the official game schedule provided to OCR, the Complainant refereed fifty games during the 2020 little league season on seventeen days. None were at [redacted content]. The Complainant claims that he was able to referee fewer games during the 2020 season than the prior season because of the distance he had to travel to games and spent more money on gas during the 2020 season than prior seasons.

OCR could not independently verify the Complainant's claim because third party records reflecting referee assignments are maintained for only one year. However, OCR determined from

the records it was provided that the Complainant travelled an average distance of 16.4 miles from [redacted content] to games in the Fall of 2020.

2. The Hiring Ban Placed on the Complainant from Coaching any Sports at [redacted content] During the Spring of 2021

Early in November 2020, the Complainant approached the [redacted content] head [redacted content] coach (Head [redacted content] Coach) and expressed interest in coaching [redacted content] at [redacted content]. The Complainant had played [redacted content] in high school and saw coaching [redacted content] as an opportunity to further connect with students in the community.

The Head [redacted content] Coach told OCR that he thought the Complainant would be a great asset to his program given his background in speed and agility training and his passion for working with students. He told the Complainant that he could volunteer with the team, and if it proved to be a good fit, he would submit his name to the administration for hiring approval. The Head [redacted content] Coach also told the Complainant that he may not be able to pay him; it would depend upon there being additional money in the [redacted content] account at the end of the season.

On or around November 6, 2020, the Head [redacted content] Coach announced to the [redacted content] team that the Complainant would be helping as a volunteer coach. The Complainant assisted in the [redacted content] for approximately two weeks. The Head [redacted content] Coach told OCR that the Complainant did a good job, brought great energy to the team, and was super relatable.

Head [redacted content] Coach 1 resigned on or around November 19, 2020, two weeks after the end of the [redacted content] season. With his resignation, the entire [redacted content] coaching staff, including the Complainant, was terminated from their coaching positions per District policy and practice.

Around the same time, some parents reached out to the [redacted content] Principal and Assistant Principal 1 to complain about the Complainant's work with the [redacted content] team. They expressed concerns that the divisive, racial issues that were impacting the [redacted content] team would affect the [redacted content] team and stated that they therefore did not want the Complainant around their children.

One parent, whose son was accused of targeting the Complainant's Black nephew (Player 3) by vandalizing his [redacted content], told Assistant Principal 1 that she feared the Complainant had ulterior motives for coaching [redacted content] and that her son "would be exposed to retaliation for the [redacted content] room incident or other unintentional things that would be labeled racist" by the Complainant. Another parent expressed similar concerns that "racial allegations would resurface" because the Complainant was "using [redacted content] to make allegations" that were "unfounded." One of the [redacted content] players similarly stated, "I feel like [the Complainant] advocates for a community that makes me uncomfortable," and "I can't help but feel like this coach . . . seems to want to cause problems."

A few weeks later, Assistant Principal 1 told the Head [redacted content] Coach that he would have to submit a formal request to the [redacted content] administration for approval to hire the Complainant as a volunteer because "there are things that we as administrators know about him that you may not." The Head [redacted content] Coach told OCR that he was surprised because this had not been the process before.

On December 10, 2020, the Head [redacted content] Coach wrote an email to Assistant Principal 1 inquiring about approval to hire the Complainant as a volunteer. In the first paragraph of the email, the Head [redacted content] Coach shared his personal interactions with the Complainant, which had all been positive. He wrote:

> I have had quite a bit of interaction with [the Complainant] in my short time here at [[redacted content]] and I genuinely love his passion, energy, excitement, commitment he brings to the [redacted] family . . . I do believe [the Complainant] brings many great attributes as mentioned above to the [redacted content] Athletic Department and our student athletes from what I know and I have seen.

In the second paragraph of the email, the Head [redacted content] Coach expressed concerns about having the Complainant join the [redacted content] program, which were based on information he learned from students who play both [redacted content] and [redacted content]. He wrote, in relevant part: "I do know that the [redacted content] season turned into a nightmare for the young men involved and do not want that to repeat around my boys."

The Head [redacted content] Coach explained to OCR that when he wrote the email, he was aware of the riff among the [redacted content] coaching staff, the Complainant's [redacted content] post, the BLM protest, and the accusations that [redacted content] players vandalized Player 3's [redacted content] in what was alleged to be a "hate crime." The Head [redacted content] Coach told OCR that he did not want the same type of fighting to affect his players and program.

Assistant Principal 1 responded to the Head [redacted content] Coach later that day. He wrote,

> After discussing with our admin team, at this time we will not be approving [the Complainant] for any positions with our Spring sports teams.

The Head [redacted content] Coach told OCR that this was the only time during his [redacted content] employment that one of his hires was disapproved by administrators.

When OCR asked Assistant Principal 1 to explain the bases for his hiring decision, he said he thought it was "not the right thing right now" to hire the Complainant and was concerned that the Complainant was prioritizing "awareness of inequities" over students' safety. He therefore recommended to the Principal that they wait to see how things develop before rehiring the Complainant. He stated that he included all Spring sports in the hiring decision because he thought the Complainant might seek employment with the [redacted content] team as he had before.

On January 5, 2021, the Head [redacted content] Coach communicated the hiring ban to the Complainant. As a result of the ban, the Complainant moved to another area of the state to coach [redacted content] in a different school district.

In March 2021, the Head [redacted content] Coach hired his white friend as a volunteer to assist with the [redacted content] team. The Head [redacted content] Coach was not required to formally submit his friend's name to the [redacted content] administration for approval.

E. The Hiring of [redacted content] Coaches for the 2021 [redacted content] Season

On February 19, 2021, [redacted content] announced a new head [redacted content] coach (Head [redacted content] Coach 2). Head [redacted content] Coach 2 was told upon accepting the position that there had been a large divide in the [redacted content] community the year before that deeply hurt some people and could continue to affect the team. He was not told the "divide" involved claims of race discrimination but told OCR that he noticed an excessive number of questions about inclusivity during the interview process.

Soon after Head [redacted content] Coach 2 was hired, he met with everyone that had coached [redacted content] at [redacted content] the prior year except the Complainant. He told OCR that he did not reach out to the Complainant because he knew that the Complainant had found another school and didn't want to "poach him." According to Head [redacted content] Coach 2, the purpose of these informal meetings was to introduce himself, make sure the coaches did not feel "dismissed," and ascertain the coaches' areas of interest; they were not formal interviews. If there was an opening that matched the coach's credentials, he would invite the coach to apply. However, his plan was always to bring over several coaches from his former school.

The first meeting Head [redacted content] Coach 2 scheduled was with Head [redacted content] Coach 1 to inform him that "he won't be on the staff this year." He was instructed by [redacted content] administration not to tell Head [redacted content] Coach 1 that there were any concerns with his being on staff, but rather that he himself had decided he does not want the prior head coach on his staff. Head [redacted content] Coach 2 told Head [redacted content] Coach 1 that although he is a great coach, he did not feel comfortable having him on his staff because he wanted to establish his own norms and culture.

In his first few weeks in his new position, Head [redacted content] Coach 2 also reached out to [redacted content] Coach 1 to ensure that [redacted content] Coach 1 would continue to run the youth program. Head [redacted content] Coach 2 explained to OCR that, although the youth program is distinct from the high school program, it is important for there to be coordination between the two programs, which is why high school coaches teach the youth [redacted content].

Head [redacted content] Coach 2 invited [redacted content] Coach 2 to apply for an [redacted content] position. However, he told him there was another [redacted content] that he was also considering. [redacted content] Coach 2 told OCR that he got the feeling that Head [redacted content] Coach 2 was not interested in hiring him. Thus, approximately one week later, [redacted content] Coach 2 told Head [redacted content] Coach 2 that he had found a position at another school in the District. Head [redacted content] Coach 2 never reached back out to [redacted content] Coach 2 when the other coach fell through although it was widely known that [redacted content] Coach 2 was not actually working at another school at the time.

As Head [redacted content] Coach 2 selected assistant coaches, he submitted their names to the [redacted content] administration so that the District could run a background check. He was never told he needed the approval of the [redacted content] administration to hire an assistant coach, but rather that he had the autonomy to hire who he wanted.

On March 19, 2021, [redacted content] Head [redacted content] Coach 2 reminded Assistant Principal 1 that they needed to let [redacted content] Coach 1 know that he would not be coaching at [redacted content] this year although he would still be running the youth little league program at [redacted content]. On March 23, 2021, Assistant Principal 1 met with [redacted content] Coach 1 and told him that [redacted content] was "not considering him for any positions here at [redacted content] at this time." [redacted content] Coach 1 complained about the decision, stating that he had been through an investigation and was exonerated. He asked about the possibility of future employment, to which Assistant Principal 1 said only "this is not the year."

On March 25, 2021, there was a parent meeting at [redacted content] during which the school's new [redacted content] coaching staff was introduced to parents. Four of the seven coaches announced had coached [redacted content] at [redacted content] during the 2020 season and supported [redacted content] Coach 1 against the allegations made by the Complainant and others. Another four coaches, who had not previously coached at [redacted content], were subsequently hired.

III. LEGAL ANALYSIS

Title VI, at 34 C.F.R. § 100.7(e), prohibits a recipient or other person from intimidating, threatening, coercing, or discriminating against any individual "because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under" the regulation (participation clause) or "for the purpose of interfering with any right or privilege secured by" the statute and regulations (interference clause).

A recipient engages in unlawful retaliation when it takes a materially adverse action against an individual either in response to the exercise of a protected activity or to deter or prevent protected activity in the future. To establish a *prima facie* case of retaliation, OCR must find the following: 1) The Complainant engaged in a protected activity; 2) The District took a materially adverse action against the Complainant; and 3) Some evidence of a causal connection exists between the protected activity and the adverse action.

If a *prima facie* case has been established, OCR then determines whether the District has a legitimate, non-retaliatory reason for its adverse action. If a non-retaliatory reason for the adverse action exists, OCR must determine whether the District's reason is genuine of a pretext for retaliation.

A. Allegation One: Preclusion of the Complainant from Coaching at [redacted content] During the Spring of 2021

1. Protected Activity

A protected activity is any action taken to further a substantive or procedural right guaranteed by the statutes and regulations enforced by OCR or to express opposition to any practice made unlawful by the statutes and regulations enforced by OCR. Advocacy on behalf of another individual's right to be free from discrimination that is prohibited by Title VI constitutes protected opposition under these statutes and is therefore a protected activity unless the manner of the opposition is found to be so disruptive, excessive, or inimical to the District's interest that it interferes with the effective functioning of the school.

OCR finds that the Complainant engaged in protected activity on multiple occasions in 2019 and 2020 by opposing race discrimination, filing complaints of discrimination, and participating in investigations of race discrimination by the District and OCR. His protected activity includes:

- Complaints about the differential treatment of players of color on the [redacted content] team to Assistant Principal 1, Head [redacted content] Coach 1, the Athletic Director, and [redacted content] coaching staff;

- Complaints about the unfair treatment and/or aggressive touching of at least three players of color on the [redacted content] team;

- District and criminal complaints about a "racially motivated" assault on the Complainant by [redacted content] Coach 1;

- Participation in the District's investigation of complaints of race discrimination in the [redacted content] program in the Summer of 2020 and support for those complaints;

- [redacted content] interview during which the Complainant complained about the District's failure to take his complaints of race discrimination seriously; and

- Participation as a witness in OCR's investigation of parents' complaints of race discrimination in the [redacted content] program (OCR Case No. 08-21-1042).

District and [redacted content] administrators were aware of the above actions, as discussed above, and were actively discussing how to manage them and mitigate their impact on the community. Although some members of the [redacted content] community were upset by the serious allegations made by the Complainant, his complaints were communicated through appropriate channels and were not so disruptive as to interfere with the functioning of [redacted content].

2. Adverse Actions

OCR must find that the Complainant experienced a materially adverse action. A materially adverse action is one that it is likely to dissuade a reasonable person in the individual's position

from making or supporting an allegation of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR.

The Complainant was prohibited from coaching [redacted content] and any other sports at [redacted content] in the Spring of 2021. As a result, he moved to another county and sought employment with another school district. In addition, the Complainant was not considered for rehire as a [redacted content] coach for the Fall 2021 season despite his experience. OCR finds that the hiring restrictions placed on the Complainant clearly constitute materially adverse actions.

3. Causal Connection

OCR must determine whether the evidence demonstrates that the District took the adverse actions because the Complainant engaged in protected activity or for the purpose of interfering with protected activity. To do so, OCR considers whether there is some evidence of a causal connection between the adverse action and the protected activity. The evidence may include changes in the treatment of the individual after protected activity occurred, the proximity in time between protected activity and adverse action, the District's treatment of the individual compared to similarly situated individuals, or the District's deviation from established policies or practices.

When analyzing retaliation under the interference clause, OCR considers whether the District's adverse action was intended to deter, discourage, prevent, slow, or stop the Complainant from engaging in a protected activity. Relevant circumstantial factors when analyzing intent to interfere include changes to the District's treatment of the Complainant after the District came to know or believe that the Complainant had recently engaged in, had a history of engaging in, was preparing to engage in, or had expressed interest or intent to engage in protected activity.

OCR finds a causal connection exists between the Complainant's protected activities and the adverse actions he experienced for several reasons. First, the decision to preclude the Complainant from employment at [redacted content] occurred on the heels of his protected activity – less than three months after he publicly discussed racism in the District on [redacted content]. And the Assistant Principal's decision not to talk to the Complainant occurred the day after the Complainant's [redacted content] post.

Second, the Complainant was treated differently than most of the other former [redacted content] coaches who, unlike the Complainant, were given an opportunity to meet with Head [redacted content] Coach 2 in February and March 2021 to discuss potential re-employment as [redacted content] coaches. Four former [redacted content] coaches, all of whom supported [redacted content] Coach 1 to some extent, were rehired by Head [redacted content] Coach 2 whereas the Complainant and two coaches supportive of the Complainant's and the parents' claims of race discrimination (i.e., Head [redacted content] Coach 1 and [redacted content] Coach 2) were not rehired. Although [redacted content] Coach 1 also was not rehired as a [redacted content] [redacted content] coach, he was permitted to continue coaching youth little league at [redacted content], which required ongoing collaboration with [redacted content] administration and the [redacted content] team.

Third, the Complainant was treated differently after he engaged in protected activity. During the Summer of 2020, the [redacted content] administration was adamant about retaining the Complainant and instructed Head [redacted content] Coach 1 not to terminate him or [redacted content] Coach 1. Assistant Principal 1 likewise told District investigators in August 2020 that he did not want the Complainant to leave [redacted content]'s program. It was only after the Complainant went public with his complaints on [redacted content] that Assistant Principal 1 considered not retaining the Complainant in any capacity despite having advocated for his hire in 2019 so that athletes of color would have a role model.

Fourth, the District deviated from its established policies and practices for hiring assistant coaches, particularly volunteer coaches, when it precluded the Complainant from being hired at [redacted content]. Before the Complainant applied for a volunteer [redacted content] coaching position, the policy and practice in the District was for head coaches to offer volunteer coaching positions to whomever they wanted. Assistant Principal 1 told OCR that he would sometimes walk onto the field and be surprised to find someone new working with students as a volunteer. Yet, when the Head [redacted content] Coach tried to bring on the Complainant as a volunteer coach, he was told for the first time in his three years at [redacted content] that he needed the approval of the [redacted content] administration to hire the Complainant as an unpaid volunteer.

The District told OCR that it created a new hiring policy for volunteer and paid assistant coaches in response to the recommendations of the panel that evaluated the parents' race complaints, and that this new policy was in effect by December 2020. The new policy requires assistant coaches to be hired/approved by school officials rather than head coaches because school officials may possess additional "insight" into their hire. However, OCR was provided no documentary evidence demonstrating that this policy was in effect when school administrators at [redacted content] told the Head [redacted content] Coach that he needed the approval of administrators before hiring paid or volunteer assistant coaches. On the contrary, all the documentation provided by the District regarding its new hiring policy for assistant coaches indicates that the earliest the policy was in place was mid-April 2021, after the relevant decision was made.

In addition, the District's new hiring policy is not being consistently applied. Head [redacted content] Coach 2 told OCR that he informed the [redacted content] administration about the coaches he wanted to hire as a courtesy but was not required to do so. In addition, there are no documents demonstrating that approval was sought or given before Head [redacted content] Coach 2 hired his current staff or that the hiring of a volunteer coach for the [redacted content] team in March 2021 was approved by the [redacted content] administration.

There is also substantial evidence that District and [redacted content] administrators were concerned about additional protected activity by the Complainant. Assistant Principal 1 told OCR that he was concerned about the "motivation" of the Complainant in seeking employment with the [redacted content] team and thought it could be related to the claims that [redacted content] players had vandalized Player 3's [redacted content] on September 30, 2020, in an alleged "hate crime." Assistant Principal 1 explained that the "timing" of the Complainant's interest in [redacted content] was curious given it coincided with [redacted content]'s inconclusive findings in its investigation of the [redacted content] incident, thereby insinuating that the Complainant was now focused on addressing racism on the [redacted content] team – as he had with the [redacted content] and [redacted content] teams the year prior.

Moreover, all the complaints from [redacted content] players and their families about the Complainant's coaching [redacted content] were based on concerns that the Complainant would make similar complaints of race discrimination in the [redacted content] program. Rather than dismiss these complaints as retaliatory, the Head [redacted content] Coach and [redacted content] administration embraced the "concerns" and articulated them as their own, stating they were trying to "protect" the [redacted content] program, athletes, and the community from the "nightmare" that plagued the [redacted content] season. Thus, OCR finds that the [redacted content] administration feared additional protected activity by the Complainant.

All these factors, when considered together, constitute sufficient evidence of a causal connection between the Complainant's protected activity and the adverse actions against him, thereby raising an inference of unlawful retaliation.

4. Legitimate Non-Retaliatory Reasons for Adverse Actions and Pretext

After OCR determines that a *prima facie* case of retaliation has been established, OCR determines whether the District has a facially legitimate, non-retaliatory reason for the adverse actions. If so, then OCR considers whether the reason for the adverse action is genuine or a pretext for retaliation.

The District claims that it precluded the Complainant from coaching any Spring sports at [redacted content] because of concerns that the Complainant would place the physical safety and emotional well-being of its students at risk based on the following complaints and/or conduct:

a. In May 2020, it was reported to [redacted content] and the Utah High School Activities Association (UHSAA) that the Complainant was working with [redacted content] players during a statewide moratorium due to the COVID-19 virus;

b. In May or June 2020, the Complainant asked students if they would be afraid of him if they saw him on the street;

c. In July 2020, the Complainant arranged and encouraged players to engage in boxing matches at the [redacted content];

d. In August 2020, the Complainant played a song in the [redacted content] that included a racial epithet;

e. In September 2020, one of the [redacted content] assistant [redacted content] coaches reported that the Complainant was encouraging poor sportsmanship;

f. In September 2020, several community members reported that the Complainant was bullying [redacted content] Coach 1's son;

g. In September 2020, several community members expressed concerns that the Complainant's [redacted content] post would bring violence into the [redacted content] community;

h. Two Black community members expressed dissatisfaction about the way the

Complainant was pursuing his grievances and its effect on the [redacted content] team;

i. On October 12, 2020, [redacted content] received a SafeUT tip from a student athlete that the Complainant was bullying a student with a disability; and

j. Complaints that the Complainant placed unhealthy physical demands on athletes through early morning training sessions.

The District also claims that it was concerned that the Complainant lacked sufficient experience coaching and playing [redacted content]; unlike [redacted content], he did not play [redacted content] in college.

OCR finds that these concerns, when considered together, constitute a facially legitimate, non-retaliatory reason for the District's adverse actions. The preponderance of the evidence, however, is that the District's proffered reasons were not the true motive for the adverse actions against the Complainant. Most of the complaints about the Complainant were made by family members or close friends of [redacted content] Coach 1 and were made almost immediately after the Complainant went public on [redacted content] about his race-based complaints although the conduct at issue occurred many months to one year before. Moreover, the District did not investigate most of these issues when they were raised, suggesting they were not of great concern to the District and that the District understood the motives and biases of the individuals raising the complaints.

For those issues the District did investigate, it determined that no further action or discipline against the Complainant was warranted. Had these issues posed a legitimate safety concern, the District would have taken immediate action, such as placing the Complainant on administrative leave, as it did [redacted content] Coach 1. Instead, the District allowed the Complainant to continue coaching [redacted content] through the end of the 2020 season. It was only after members of the [redacted content] community raised concerns about anticipated protected activity by the Complainant that the District decided to act on the earlier complaints about the Complainant although it had information that many of these complaints were unfounded or overstated.

OCR will address below the evidence regarding each of the above complaints about the Complainant:

a. UHSAA Violation: The District told OCR that the only complaint about the Complainant received prior to his July 2020 protected activity is that he violated a statewide moratorium during the COVID-19 pandemic. The Complainant explained to OCR that he trained some [redacted content] players in [redacted content] at public parks during the moratorium and did not realize that he was prohibited from doing so. After [redacted content] administrators explained the scope of the moratorium to the Complainant, he immediately stopped working with [redacted content] athletes although they had been his private clients for years.

The administration of [redacted content] similarly explained the situation in an email to UHSAA: "This was not an attempt to circumvent rules or the moratorium, it was a coach who did not understand what moratorium meant and feeds his family with athletic training." The following day, [redacted content] reiterated to UHSAA that it had met with the Complainant, trained him

on the policy, and "determined his actions were unintentional and based on flawed information/awareness/interpretation of guidelines."

Assistant Principal 1 stressed to OCR the serious consequences on a school of a "UHSAA violation." However, a UHSAA assistant director told OCR that UHSAA did not take any action against any schools regarding violations of the COVID moratorium, which were frequently reported. Based on the determination by [redacted content] administrators that the Complainant's violation of the UHSAA rule was "unintentional," the District did not take any disciplinary or other action against the Complainant based on this complaint other than meeting with him once to explain the rules.

b. Discussions with Students about Race: Assistant Principal 1 told OCR that one of the ways in which the Complainant put the "mental and emotional safety" of students at risk was a discussion he had with [redacted content] players about racial equality after the murder of George Floyd and the discovery of a racial epithet at [redacted content]. The [redacted content] Principal explained that the Complainant asked white players to raise their hand if they would be scared of him if they saw him on the street, and when none of the students raised their hand, the Complainant allegedly said, "no matter what you say, you would be afraid." A parent complained that this conversation made her son uncomfortable and afraid of the Complainant. The Principal reported that another parent complained that her child "should not have to sit there and be lectured about how racist white people are."

The Complainant denies asking the question that was alleged. He claims that he asked how many players talked to their parents or their teammates of color about George Floyd's murder or the racial epithet at [redacted content]. He also told students to ask themselves why they were not having conversations with their Black teammates about racial incidents that are likely affecting them. In any event, [redacted content] never investigated this incident or talked to the Complainant about the allegations.

c. Boxing Matches: OCR was told by several witnesses that on or around July 17, 2020, some [redacted content] players challenged players on their team to a boxing match in the [redacted content]. The Complainant told OCR that he bought the players boxing gloves so that they would not fight with bare knuckles and put limits on the match so that no one would get hurt. He explained that he thought, based on his own high school experience, that this would be a good way for the boys to move past their differences. The Complainant stated that he, Head [redacted content] Coach 1, and [redacted content] Coach 1 were present for the boxing match; Head [redacted content] Coach 1 denies having any knowledge of the matches. No one was hurt and the players hugged each other afterwards.

While OCR agrees with the District that the Complainant's facilitation of boxing matches among [redacted content] athletes is inappropriate and potentially dangerous behavior, there is overwhelming evidence that the boxing matches in July 2020 did not contribute to the District's hiring decisions regarding the Complainant six months later. Assistant Principal 1 told OCR that he first learned about the boxing matches in the Summer of 2020 but did not take any action regarding this issue. When OCR asked him why, he said it was because he had "been removed from the investigation of racism on the [redacted content] team by that time" but was still the administrator responsible for athletics, and he "didn't think there was an imminent threat of it happening again."

District administrators were also made aware of this issue in August 2020, as it was discussed in [redacted content] Coach 1's response to the allegations of racism against him, but the District did not investigate the issue. The allegation was reported again to the District on or around September 23, 2020 by a community member. At that time, the District did a cursory investigation that involved talking only to the Athletic Director, who denied knowledge of any boxing event. None of the students who were allegedly involved, nor Head [redacted content] Coach 1 or the Complainant were interviewed.

Had [redacted content] and District administrators thought the Complainant's conduct in July 2020 constituted a serious safety risk, it would not have treated this allegation in such a cavalier manner and waited over four months to act upon it without ever having fully investigated it.

d. Music: The District claims that the Complainant played music with the "N" word in the [redacted content] on or around August 19, 2020. However, Assistant Principal 1 told OCR that he learned that night that the music belonged to a player – not the Complainant. Three additional witnesses plus the Complainant similarly told OCR that, in the Summer of 2020, that it was players – not the Complainant – who sometimes played inappropriate music. The issue was addressed at a coach's meeting on August 21, 2020, and a memo was issued stating that thereafter Head [redacted content] Coach 1 would approve and be responsible for all music played at [redacted content] events.

Nevertheless, Assistant Principal 1 wrote in an email to himself on November 23, 2020: "[i]t was reported to me that [the Complainant] played music with the N-word very easily identified around coaches, staff, athletes, students and spectators." When OCR asked about the basis for this statement, Assistant Principal 1 claimed that two athletes, whom he declined to identify, reported some time after August 19, 2020, that the Complainant played music with the N-word on his personal speakers, which is inconsistent with all the evidence obtained by OCR.

e. Poor Sportsmanship: An [redacted content] coach who is close friends with [redacted content] Coach 1 ([redacted content] Coach 3) complained about the Complainant on September 28, 2020, shortly after the Complainant's [redacted content] post. Among his complaints, [redacted content] Coach 3 stated that two [redacted content] mouthed off during the [redacted content] game, and that the Complainant "justified their actions," which the District claims "encouraged poor sportsmanship."

The District never investigated this allegation. Moreover, [redacted content] Coach 3 acknowledged in his email report that the [redacted content] were benched for their conduct, which the Complainant confirmed. The Complainant also told OCR that he personally pulled the players aside and explained that they cannot react to provocation from the opposing team.

f. Bullying/Targeting of [redacted content] Coach 1's Son: The only complaint against the Complainant that was formally and fully investigated by the District is the October 1, 2020 complaint from several family members and friends of [redacted content] Coach 1 that the Complainant bullied and targeted [redacted content] Coach 1's son (Player 4). That investigation does not justify the District's adverse actions against the Complainant for several reasons.

First, the investigation was inconclusive. After interviewing nine coaches and seven players, the investigators concluded that Player 4 was treated "differently" by the Complainant and that

Player 4's interactions with the Complainant were negative, but that there was insufficient evidence to conclude that the Complainant had targeted, bullied, or discriminated against Player 4 or that the Complainant had violated District policy. As a result, no disciplinary or other action was taken against the Complainant, and he was not even informed of the findings.

Second, Assistant Principal 1, who recommended the hiring ban on the Complainant, was not involved in nor provided the investigation findings until after he made his hiring decision.

Third, the District waited until after the [redacted content] season concluded to investigate the allegations against the Complainant, suggesting that it could not have been too concerned that the Complainant posed a safety risk to the team. The District's investigator told OCR that Player 3 requested the investigation be delayed until after the [redacted content] season concluded because things had improved, and the District determined it was safe to delay the investigation because a buddy coaching system had been put in place.

Fourth, the allegations against the Complainant pale in comparison to those against [redacted content] Coach 1, and the District found that some of the claims of racism against [redacted content] Coach 1 were "partially substantiated," whereas the Complainant did not violate any District policy. Nevertheless, the Complainant was banned from any coaching position at [redacted content] in the Spring of 2021 whereas [redacted content] Coach 1 was encouraged by Head [redacted content] Coach 2 to continue running the youth little league program at [redacted content].

g. [redacted content] Post: Assistant Principal 1 told OCR that the Complainant's [redacted content] post contributed to his hiring decision. He said he thought the Complainant's advocacy "tactics" did not appropriately weigh student safety and were putting students at risk. Yet, Assistant Principal 1 also told OCR that he discussed the Complainant's [redacted content] post with Head [redacted content] Coach 1 and the [redacted content] Principal at the time, and they all agreed that it constituted protected speech since the Complainant was clear that he was expressing his personal opinion. Thus, they never talked to the Complainant about his post nor took any disciplinary or other action against him because of it and allowed him to continue to coach through the end of the season.

h. Criticism from Black Community Members: Assistant Principal 1 told OCR that his hiring decision was influenced by the fact that two Black people in the community who he respects came to him with concerns about the way the Complainant was pursuing his grievances. In particular, he stated that a Black coach ([redacted content] Coach 4) pulled his own son, Player 3, out of [redacted content] because the Complainant was a "loose canon." During OCR's interview of [redacted content] Coach 4, [redacted content] Coach 4 vehemently denied saying anything of the kind. [redacted content] Coach 4 additionally provided a September 28, 2020 text message to OCR in which [redacted content] Coach 4 told Assistant Principal 1 that he was pulling Player 3 out of [redacted content] because of "racial bigotry."

Assistant Principal 1 additionally claims that Parent 1, who is Black and has a biracial son who plays [redacted content], had concerns about the Complainant's [redacted content] post. Parent 1 told OCR that her concerns were not about the Complainant's use of social media to complain about race discrimination but rather that the Complainant had not come to the Black community for support earlier. Parent 1 additionally told OCR that she asked Assistant Principal 1 why he

was protecting [redacted content] Coach 1 and explained that [redacted content] Coach 1 had been aggressive towards her Black son as well. Nine days later, Parent 1 recorded her own [redacted content] post complaining about the criminalization of the Complainant after he complained about racism.

i. SafeUT Tip of Bullying: Assistant Principal 1 told OCR that one of the "critical components" for his decision not to re-hire the Complainant was a SafeUT tip claiming that the Complainant called an athlete with a disability "lazy" and "stupid." Assistant Principal 1 said that he was aware of this complaint but was not involved in the investigation of it.

The [redacted content] Assistant Principal who investigated the SafeUT report (Assistant Principal 2) told OCR that the student claimed only that the Complainant said, "stop acting like a five-year old." Assistant Principal 2 talked to the student and his guardian but never interviewed the witness who made the SafeUT report nor the Complainant.

The Complainant told OCR that he asked the student when he was going to grow up because he was horsing around and not doing what he was supposed to do at practice, which was a regular occurrence. The Complainant denies that he told the student to stop acting like a five-year old and said he was unaware the student has a disability. [redacted content] Coach 4 confirmed that the Complainant would sometimes tell this student to pay attention because the student often disrupted practice and told OCR that he never heard the Complainant say anything inappropriate to the student.

Even if the Complainant did make the comment as alleged, the [redacted content] administration thought it was sufficient to have Head [redacted content] Coach 1 talk to the Complainant about his conduct. According to Assistant Principal 2, [redacted content] administrators did not feel any further action was warranted, and the District allowed the Complainant to continue coaching for the rest of the season.

j. Students' Physical Health: Assistant Principal 1 told OCR that he was concerned the additional workouts the Complainant offered to student athletes in the early morning or after practice were not healthy for students mentally, physically, or emotionally. He additionally told OCR that the workouts were discussed among administrators in the athletics department almost one year before the imposition of the hiring restrictions on the Complainant. The administrators concluded in an internal email that: "It's a problem of our own creating, Because we gave [the Complainant] building keys and administration has given him permission to train who he wants essentially whenever." None of those permissions were ever revoked and no concerns about the safety of these supplemental, voluntary workouts were ever shared with the Complainant.

k. Qualifications to Coach [redacted content]: Assistant Principal 1 told OCR that another basis for his hiring decision was concerns about the Complainant's lack of skills in [redacted content] but admitted that he does not know the Complainant's experience with [redacted content]. The Complainant told OCR that he played [redacted content] for nine years, was an [redacted content] player, and trained with a nationally ranked [redacted content] club team.

While the Complainant does not have the breadth of experience with [redacted content] that he has with [redacted content], this was not of concern to the Head [redacted content] Coach. The Head [redacted content] Coach told OCR that the Complainant's other skills and strengths outweighed his lack of [redacted content] specific knowledge and that [redacted content] skills were not critical for the position.

Thus, while a few of the above complaints raise legitimate concerns about the Complainant's conduct, the preponderance of the evidence is that they did not form the basis for the adverse employment actions taken against the Complainant because the issues were either addressed by the District through informal, verbal coaching or deemed not significant enough at the time to warrant a conversation with the Complainant. The Complainant was never disciplined nor placed on a performance plan during his employment with the District. Had the District truly believed the Complainant posed a potential danger to students, it would have disciplined him and/or not allowed him to continue coaching [redacted content] at [redacted content] in the Fall of 2020.

In addition to the substantial evidence that the proffered reasons for the adverse actions are pre-textual, there is an abundance of direct and circumstantial evidence of the District's retaliatory motivation. Beginning in the Spring of 2020, when the Complainant started to discuss racial inequities at [redacted content], a pattern developed of efforts to dissuade or intimidate the Complainant from making further complaints of race discrimination.

First, the Complainant was terminated from his [redacted content] coaching position after he complained that players of color were being treated less favorably than white players whose dads were involved with the team. Then, in July 2020, after the Complainant accused [redacted content] Coach 1 of race-based assault, the [redacted content] Principal instructed Head [redacted content] Coach 1 to make sure that the Complainant did not make additional "daddy ball comments" (i.e., complaints of race discrimination) and to ensure the Complainant "is building unity vs. sowing seeds of contention." When that did not happen and the Complainant instead publicized his complaints of race discrimination on [redacted content], Assistant Principal 1 refused to talk to the Complainant because the complaints of racism were allegedly impacting Assistant Principal 1's personal and professional life.

Once the community started complaining about the Complainant, which the District acknowledges were in response to the Complainant's [redacted content] post and support from the BLM chapter, the District adopted the rhetoric of those complaints – namely, that the Complainant was putting the health and safety of the community at risk – even though most of the complaints against the Complainant were unfounded, overstated, and/or biased in order to justify placing hiring restrictions on the Complainant.

When OCR asked District witnesses why some former [redacted content] coaches have been rehired but not others, Assistant Principal 1 stated because "none of the [rehired] individuals have expressed an opinion pro or con on either side of the events" underlying the race discrimination complaints. While not completely accurate because there is evidence that all the [redacted content] coaches who were rehired by [redacted content] supported [redacted content] Coach 1 to some extent, this statement further illustrates that the Complainant's and the other two coaches' protected activity was the distinguishing factor.

The temporal limitations placed on the District's hiring decisions is further evidence of the District's retaliatory motive. If there were legitimate, non-discriminatory reasons not to hire these coaches, the reasons would still exist one year later. Yet, the hiring ban on the Complainant was time limited, suggesting that the Complainant could potentially be rehired at [redacted content] after OCR concludes its investigation. If the Complainant truly posed a risk to the physical and/or emotional safety of students, the District would not consider re-hiring him in the future. Assistant Principal 1 similarly told the [redacted content] Principal "now is not the right time" for [redacted content] Coach 1 to work at [redacted content] even though the District had found the claims of racism and assault against [redacted content] Coach 1 to be unsubstantiated.

For the reasons discussed here and above in the section on causation, OCR finds that the legitimate, non-discriminatory reasons proffered by the District for the hiring ban it placed on the Complainant are pre-textual, and that the District would not have taken that action but for the District's retaliatory motivation. Thus, OCR finds the District's hiring ban constitutes unlawful retaliation against the Complainant in violation of Title VI and its implementing regulations.

B. Allegation Two: Prohibition on the Complainant from Refereeing at [redacted content] in the Fall of 2020

OCR finds that the Complainant also established a *prima facie* case that the prohibition on him from refereeing at [redacted content] in the Fall of 2020 is retaliatory. For the reasons discussed above, the Complainant engaged in multiple forms of protected activity in the Summer of 2020, including accusing [redacted content] Coach 1 of race-based criminal assault. The Complainant suffered a materially adverse action because the refereeing limitation required him to travel further for games, which had a financial impact on him because he had to spend more money on gas and could referee fewer games. OCR finds that the financial impact of the refereeing limitation would dissuade a reasonable person from making or supporting a complaint of race discrimination. There is evidence of a causal connection between the adverse action and the Complainant's protected activity because the only reason provided to the Complainant and OCR for the refereeing limitation was the "turmoil" and race-based "conflict" between the Complainant, [redacted content] Coach 1, and the [redacted content] administration.

The District has not proffered a facially legitimate, non-retaliatory reason for the refereeing prohibition on the Complainant. It first defended against the allegation by denying that the District precluded the Complainant from refereeing at [redacted content] based on information from UHSAA that it received no such requests. However, UHSAA told OCR that any such request would have come to the Utah County Youth [redacted content] Conference – not UHSAA – because the Complainant refereed youth little league games rather than high school games.

Once OCR discovered this distinction, it gave the District another opportunity to respond to the allegation. This time, the District claimed that it was not legally responsible for any retaliation by [redacted content] Coach 1 because [redacted content] Coach 1 was acting in his role as the little league coordinator and not as an employee or agent of the District at the time. The District did not take a position on whether [redacted content] Coach 1 actually made the request, nor provide a non-retaliatory reason for any such request.

[redacted content] Coach 1, who is no longer employed by the District, declined to be interviewed by OCR but communicated through his counsel that he denies making the request. No further information was provided to OCR by [redacted content] Coach 1.

OCR finds that [redacted content] Coach 1 made the alleged request because the assigner's description of what occurred is consistent with the information provided by the Complainant and not disputed by the president of the Youth Conference. Moreover, the documentary evidence shows that the Complainant was not assigned to any games at [redacted content] during the Fall 2020 season, and both he and the assigner told OCR that he refereed at [redacted content] the prior year. Thus, the preponderance of the evidence is that the Complainant was prohibited from refereeing at [redacted content] in the Fall of 2020 based on a request from [redacted content] Coach 1, who the Complainant accused of race discrimination and race-based assault. Since no one has articulated a facially legitimate, non-discriminatory reason for the prohibition, OCR found that the action was retaliatory.

OCR further finds that the District is responsible for the retaliation by [redacted content] Coach 1 because he was an employee of the District at the time that he made the retaliatory request, and he justified the request by providing information about a racial dispute that occurred in his capacity as a [redacted content] coach. More importantly, [redacted content] Coach 1 was a respondent in the District's investigation of race discrimination at [redacted content] when he made the request.

Pursuant to District Policy 7100, the District was obligated to warn [redacted content] Coach 1 of the prohibition on retaliation when it received the complaints of discrimination against him in July 2020. It was also obligated to take action to prevent retaliation against the Complainant when counsel for the Complainant complained to the Superintendent in September 2020 about retaliation against the Complainant. The District is accordingly responsible for [redacted content] Coach 1's violation of District policy and Title VI by retaliating against the Complainant.

IV. CONCLUSION

For the reasons set forth above, OCR finds under Section 303(b) of OCR's Case Processing Manual (CPM) (July 18, 2022) that the preponderance of the evidence supports the conclusion that the District retaliated against the Complainant for bringing and supporting complaints of race discrimination by precluding him from employment as a coach in the Spring of 2021 and prohibiting him from refereeing at [redacted content] in the Fall of 2020. The District accordingly failed to comply with Title VI and its implementing regulations.

Upon being advised of OCR's violation findings, the District entered into an Agreement to resolve the matters. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Title VI and its implementing regulations.

This case is now in the monitoring phase. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. The Complainant will receive a copy of OCR's monitoring letters. The monitoring of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When

the monitoring phase of this case is complete, OCR will close this case and send a letter to the District with a copy to the Complainant stating that this case is closed.

This concludes OCR's investigation in this case and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determinations in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for the courtesy and cooperation extended to OCR during the investigation and resolution of this case. If you have any questions, please contact [redacted content], the attorney assigned to this complaint, at [redacted content].

Sincerely,

/s/

Thomas M. Rock
Supervisory General Attorney

Enclosure

cc: Kraig Brinkerhoff, Executive Director, Legal Services for Alpine School District
(By email only at: [redacted content])

Patrick Tanner, Counsel for Alpine School District
(By email only at: [redacted content])